No. 7223

APPENDIX OF APPELLANT

FILED
JOHN T. FEY, Clerk

In the
UNITED STATES COURT OF APPEALS
for the Fourth Circuit

No. 7452

FRED FRANKEN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

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FILED

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[Caption Omitted]

JUDGMENT

This 26th day of April, 1957, came the United States of America by Albert M. Morgan, United States Attorney, and came as well the defendant, Fred Franken, in person, and by C. Lee Spillers, his counsel.

And the court having asked the defendant whether he has anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the court, it is ordered that the defendant be committed to the custody of the Attorney General, or his authorized representative, for imprisonment for a period of THREE (3) YEARS and that he pay a fine of THREE THOUSAND ($3,000.00) DOLLARS without costs. And it is further ordered that after the expiration of the prison sentence herein that the said defendant should stand committed as aforesaid until the fine of THREE THOUSAND ($3,000.00) DOLLARS is paid or he be otherwise released according to the law.

Thereupon the said defendant tendered for filing a Notice of Appeal from the judgment rendered on this day to the United States Court of Appeals for the Fourth Circuit, which Notice of Appeal is ordered to be filed.

Thereupon the said defendant asked leave to be admitted to bail pending such an appeal, which motion is granted, and bond is fixed in the penalty of FOUR THOUSAND ($4,000.00) DOLLARS. Thereupon the said defendant tendered an appeal bond in the penalty aforesaid conditioned as the law provides and approved by the clerk of this court and the said defendant is released in accordance with the conditions set out in the aforesaid mentioned appeal bond.

ENTERED:

H. S. BOREMAN
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

No. 6936

United States of America

v.

Fred Franken, Paul Albert DeArdo and James A. Whitehead

(Title 18, Section 371, USC)

THE GRAND JURY CHARGES:

1. The following named persons, hereinafter referred to as defendants, are hereby indicted and made defendants herein, FRED FRANKEN, PAUL ALBERT DeARDO and JAMES A. WHITEHEAD.

2. That from on or about the.....day of November, 1954, up to and including the.....day of August, 1955, and at all times between said dates, in the Northern District of West Virginia and elsewhere, the defendants named in paragraph 1 of this indictment did unlawfully conspire, combine, confederate, arrange and agree together, each with the other and with each other, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to unlawfully transport and cause to be transported in interstate commerce certain goods, wares and merchan-

dise of the value of $5,000.00 and more, knowing the same to have been stolen, in violation of Title 18, Section 2314, United States Code, and to sell and dispose of and to cause to be sold and disposed of, said certain goods, wares and merchandise of the value of $5,000.00 and more, transported in and constituting interstate commerce, knowing the same to have been stolen, in violation of Title 18, Section 2315, United States Code, and, in particular, that the said defendants did unlawfully conspire, combine, confederate, arrange and agree together, each with the other and with each other, and with divers other persons to the Grand Jurors unknown, that during the said period of time said defendants would unlawfully transport and cause to be transported in interstate commerce certain prime steel in mill width coils of the value of $5,000.00 and more, said steel then and there being the property of the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, West Virginia, and having been theretofore stolen by the said defendants, and taken by fraud with intent to steal the same, from the plant of the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, in the State of West Virginia, and in the Northern District of the State of West Virginia, to Farrell and to Sharon in the State of Pennsylvania, and to Chicago in the State of Illinois, and to divers other places outside the boundaries of the State of West Virginia to the Grand Jurors unknown, they, the said defendants and each of them, then and there well knowing said steel to have been stolen; and that they, the said defendants and each of them, during the period of time aforesaid, would sell and dispose of and cause to be sold and disposed of said steel, the same having theretofore been the property of and stolen from the Lorentzen Hardware Mfg. Corp., a

corporation, at Weirton, West Virginia, as aforesaid, and transported in and constituting interstate commerce from Weirton, in the State of West Virginia, in the Northern District of the State of West Virginia, to Farrell and to Sharon, in the State of Pennsylvania, and to Chicago, in the State of Illinois, and to divers other places outside the boundaries of the State of West Virginia to the Grand Jurors unknown, they, the said defendants and each of them, then and there well knowing said steel to have been stolen and thereafter transported in and constituting interstate commerce, as hereinbefore set forth.

3. That in furtherance of said unlawful conspiracy, confederation, combination and agreement, the said defendants and each of them, for the purpose of effecting the objects of said conspiracy as charged, and well knowing the premises did on the several dates and at the places hereinafter mentioned do and commit the following overt acts, in violation of Title 18, Section 371, United States Code, that is to say:

OVERT ACT NO. 1

That on or about the 11th day of November, 1954, Paul Albert DeArdo and James A. Whitehead stole and removed 42,650 pounds of steel from the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, West Virginia, and, after removing all identification markings therefrom, loaded said steel on a motor truck driven by R. W. Oliphant, theretofore arranged for by Fred Franken with the Aetna Freight Lines, Columbiana, Ohio, and said steel having been theretofore stolen was shipped by Fred Franken, the consignor thereof, and transported by him in interstate commerce from Weirton,

West Virginia, to Farrell, Pennsylvania, by said motor carrier, and delivered and sold to the Sharonsteel Products Division of Sharon Steel Corporation, the consignee thereof, by Fred Franken.

OVERT ACT NO. 2

That on or about the .....day of November, 1955, after the occurrence in Overt Act No. 1, Fred Franken met with Paul Albert DeArdo at the plant of the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, West Virginia, and gave Paul Albert DeArdo one thousand dollars in currency and promised Paul Albert DeArdo another thousand dollars for steel per their agreement; and thereafter Paul Albert DeArdo gave James A. Whitehead about three hundred dollars in currency, of the one thousand dollars Paul Albert DeArdo had received from Fred Franken for the first shipment of steel Paul Albert DeArdo and James A. Whitehead had stolen from the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, West Virginia, and Fred Franken had sold.

OVERT ACT NO. 3

That on or about the 6th day of January, 1955, Paul Albert DeArdo and James A. Whitehead stole and removed six coils, being 33,565 pounds of mill width prime steel, from the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, West Virginia, and, after removing all identification markings therefrom, loaded said steel coils on a motor truck driven by John Obney, theretofore arranged for by Fred Franken with the Aetna

Freight Lines, Columbiana, Ohio, and said steel having been theretofore stolen was shipped by Fred Franken, the consignor thereof, and transported by him in interstate commerce from Weirton, West Virginia, to Farrell, Pennsylvania, by said motor carrier, and delivered and sold to the Sharonsteel Products Division of Sharon Steel Corporation, the consignee thereof, by Fred Franken.

OVERT ACT NO. 4

That on or about the 8th day of January, 1955, Paul Albert DeArdo and James A. Whitehead stole and removed seven coils of steel, being 34,630 pounds of mill width prime steel, from the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, West Virginia, and, after removing all identification markings therefrom, loaded said steel coils on a motor truck driven by Earl Wilson, theretofore arranged for by Fred Franken with the Aetna Freight Lines, Columbiana, Ohio, and said steel having been theretofore stolen was shipped by Fred Franken, the consignor thereof, and transported by him in interstate commerce from Weirton, West Virginia, to Farrell, Pennsylvania, by said motor carrier, and delivered and sold to the Sharonsteel Products Division of Sharon Steel Corporation, the consignee thereof, by Fred Franken.

OVERT ACT NO. 5

That on or about the 21st day of February, 1955, Paul Albert DeArdo and James A. Whitehead stole and removed six coils, being 34,540 pounds of mill width prime steel, from the Lorentzen Hardware Mfg. Corp., a corporation, at Weirton, West Virginia, and, after removing